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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KIRSTIN BLAISE LOBATO,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; THOMAS THOWSEN,
and JAMES LaROCHELLE,

Defendants.

CASE NO. 2:19-cv-01273-RFB-EJY

**LVMPD DEFENDANTS' ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT (ECF NO. 104)**

Defendants Las Vegas Metropolitan Police Department ("LVMPD"), Thomas Thowsen, and James LaRochelle (cumulatively "LVMPD Defendants"), by and through their attorneys of record, Marquis Aurbach Coffing, hereby answer and allege in accordance with FRCP 15(a)(3), Plaintiff's First Amended Complaint (ECF No. 104) as follows:

INTRODUCTION

1. In answering paragraphs 1, 2, 3, 4 and 5 of Plaintiff's First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

JURISDICTION AND VENUE

2. In answering paragraphs 6 and 7 of Plaintiff's First Amended Complaint, the LVMPD Defendants admit the allegations contained therein.

PARTIES

3. In answering paragraph 8 of Plaintiff's First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

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12. In answering paragraphs 41, 48, 51, 52, 53, 54, 56, 57 and 60 of Plaintiff's First Amended Complaint, the LVMPD Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

13. In answering paragraphs 42, 50, 58, 59, 61 and 64 of Plaintiff's First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

DEFENDANTS THOWSEN AND LAROCHELLE KNEW THAT PLAINTIFF DID NOT MURDER DURAN BAILEY BUT WRONGFULLY ARRESTED HER ANYWAY

14. In answering paragraphs 65, 66, 67, 68, 69, 71, 72, 75, 78, 79, 83, 85, 87 and 88 of Plaintiff's First Amended Complaint, the LVMPD Defendants admit the allegations contained therein.

15. In answering paragraphs 70, 73, 74, 76, 77, 80, 81, 82, 84, 86, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 of Plaintiff's First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

16. In answering paragraph 80 of Plaintiff's First Amended Complaint, the LVMPD Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

DEFENDANTS MANIPULATED WITNESS STATEMENTS AND IGNORED EXCULPATORY INFORMATION

17. In answering paragraphs 103, 104, 105, 106, 107, 108, 109, and 110 of Plaintiff's First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

PLAINTIFF'S WRONGFUL PROSECUTION AND CONVICTION

18. In answering paragraphs 111, 117, 119 and 120 of Plaintiff's First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

19. In answering paragraphs 112, 113, 116 and 118 of Plaintiff's First Amended Complaint, the LVMPD Defendants admit the allegations contained therein.

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1 20. In answering paragraphs 114 and 115 of Plaintiff's First Amended
2 Complaint, the LVMPD Defendants are without sufficient information to form an opinion as
3 to the truth of the allegations contained therein and, therefore, deny the same.

4 **PLAINTIFF'S EXONERATION**

5 21. In answering paragraph 121 of Plaintiff's First Amended Complaint, the
6 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
7 the allegations contained therein and, therefore, deny the same.

8 22. In answering paragraphs 122 and 123 of Plaintiff's First Amended
9 Complaint, the LVMPD Defendants admit the allegations contained therein.

10 **PLAINTIFF'S INJURIES**

11 23. In answering paragraphs 124, 125 and 126 of Plaintiff's First Amended
12 Complaint, the LVMPD Defendants deny the allegations contained therein.

13 **COUNT I: 42 U.S.C. §1983 – FIFTH AND FOURTEENTH AMENDMENTS**

14 **INVOLUNTARY CONFESSION**

15 24. In answering paragraph 127 of Plaintiff's First Amended Complaint, the
16 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
17 the allegations contained therein and, therefore, deny the same.

18 25. In answering paragraphs 128, 129, 130, 131, 132, 133, 134, 135, 136, 137,
19 138, 139, 140, 141 and 142 of Plaintiff's First Amended Complaint, the LVMPD
20 Defendants deny the allegations contained therein.

21 **COUNT II: 42 U.S.C. §1983 – FOURTEENTH AMENDMENT**

22 **DUE PROCESS**

23 26. In answering paragraph 143 of Plaintiff's First Amended Complaint, the
24 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
25 the allegations contained therein and, therefore, deny the same.

26 27. In answering paragraphs 144, 145, 146, 147, 148, 150 and 151 of Plaintiff's
27 First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

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1 28. In answering paragraphs 149 of Plaintiff's First Amended Complaint, the
2 LVMPD Defendants admit the allegations contained therein.

3 **COUNT III: 42 U.S.C. §1983 – FOURTH AMENDMENT**

4 **CONTINUED DETENTION WITHOUT PROBABLE CAUSE AND DEPRIVATION**
5 **OF LIBERTY**

6 29. In answering paragraph 152 of Plaintiff's First Amended Complaint, the
7 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
8 the allegations contained therein and, therefore, deny the same.

9 30. In answering paragraphs 153, 154, 155, 156, 157, 158 and 159 of Plaintiff's
10 First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

11 **COUNT IV: 42 U.S.C. §1983 – FAILURE TO INTERVENE**

12 31. In answering paragraph 160 of Plaintiff's First Amended Complaint, the
13 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
14 the allegations contained therein and, therefore, deny the same.

15 32. In answering paragraphs 161, 162, 163 and 164 of Plaintiff's First Amended
16 Complaint, the LVMPD Defendants deny the allegations contained therein.

17 **COUNT V: 42 U.S.C. § 1983 – CONSPIRACY TO DEPRIVE CONSTITUTIONAL**
18 **RIGHTS**

19 33. In answering paragraph 165 of Plaintiff's First Amended Complaint, the
20 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
21 the allegations contained therein and, therefore, deny the same.

22 34. In answering paragraphs 166, 167, 168, 169, 170, 171 and 172 of Plaintiff's
23 First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

24 **COUNT VI: NEVADA STATE LAW – MALICIOUS PROSECUTION**

25 35. In answering paragraph 173 of Plaintiff's First Amended Complaint, the
26 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
27 the allegations contained therein and, therefore, deny the same.

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1 36. In answering paragraphs 174, 175, 176, 177 and 178 of Plaintiff's First
2 Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

3 **COUNT VII: NEVADA STATE LAW – ABUSE OF PROCESS**

4 37. In answering paragraph 179 of Plaintiff's First Amended Complaint, the
5 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
6 the allegations contained therein and, therefore, deny the same.

7 38. In answering paragraphs 180, 181, 182 and 183 of Plaintiff's First Amended
8 Complaint, the LVMPD Defendants deny the allegations contained therein.

9 **COUNT VIII: NEVADA STATE LAW – INTENTIONAL INFLICTION OF**
10 **EMOTIONAL DISTRESS**

11 39. In answering paragraph 184 of Plaintiff's First Amended Complaint, the
12 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
13 the allegations contained therein and, therefore, deny the same.

14 40. In answering paragraphs 185, 186, 187 and 188 of Plaintiff's First Amended
15 Complaint, the LVMPD Defendants deny the allegations contained therein.

16 **COUNT IX: NEVADA STATE LAW – CIVIL CONSPIRACY**

17 41. In answering paragraph 189 of Plaintiff's First Amended Complaint, the
18 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
19 the allegations contained therein and, therefore, deny the same.

20 42. In answering paragraphs 190, 191, 192, 193 and 194 of Plaintiff's First
21 Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

22 **COUNT X: NEVADA STATE LAW - INDEMNIFICATION**

23 43. In answering paragraph 195 of Plaintiff's First Amended Complaint, the
24 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
25 the allegations contained therein and, therefore, deny the same.

26 44. In answering paragraph 196 of Plaintiff's First Amended Complaint, the
27 LVMPD Defendants deny the allegations contained therein.

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1 45. In answering paragraph 197 of Plaintiff's First Amended Complaint, the
2 LVMPD Defendants admit the allegations contained therein.

3 **COUNT XI: NEVADA CONSTITUTION – DUE PROCESS**

4 46. In answering paragraph 198 of Plaintiff's First Amended Complaint, the
5 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
6 the allegations contained therein and, therefore, deny the same.

7 47. In answering paragraphs 199, 200, 201, 202, 203, 204, 205 and 206 of
8 Plaintiff's First Amended Complaint, the LVMPD Defendants deny the allegations
9 contained therein.

10 **COUNT XII: NEVADA CONSTITUTION – CONTINUED DETENTION WITHOUT**
11 **PROBABLE CAUSE AND DEPRIVATION OF LIBERTY**

12 48. In answering paragraph 207 of Plaintiff's First Amended Complaint, the
13 LVMPD Defendants are without sufficient information to form an opinion as to the truth of
14 the allegations contained therein and, therefore, deny the same.

15 49. In answering paragraphs 208, 209, 210, 211, 212, 213 and 214 of Plaintiff's
16 First Amended Complaint, the LVMPD Defendants deny the allegations contained therein.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 LVMPD did not enact or promulgate any policy, statute, ordinance or custom, policy
20 or procedure which denied or abridged any of the Plaintiff's constitutional rights.

21 **SECOND AFFIRMATIVE DEFENSE**

22 The damage(s) sustained by Plaintiff, if any, were caused by the acts of third persons
23 who were not agents, servants, or employees of LVMPD or the named Defendants and who
24 were not acting on behalf of LVMPD or the named Defendants in any manner or form, and,
25 as such, the LVMPD Defendants are not liable in any manner to the Plaintiff.

26 **THIRD AFFIRMATIVE DEFENSE**

27 At all times mentioned in Plaintiff's First Amended Complaint, the LVMPD
Defendants acted with a good faith belief that their actions were legally justifiable.

FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's causes of actions against the LVMPD Defendants sound in negligence, no recovery can be predicated upon 42 USCA § 1983.

FIFTH AFFIRMATIVE DEFENSE

Any injuries allegedly sustained by Plaintiff were the result of her own negligence or actions.

SIXTH AFFIRMATIVE DEFENSE

The Individual Defendants are protected by the doctrine of qualified immunity.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate her own damages.

EIGHTH AFFIRMATIVE DEFENSE

The conduct of the LVMPD Defendants pertaining to the incident(s) alleged in Plaintiff's First Amended Complaint are not extreme, outrageous, or reckless.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages were caused, in whole or in part, by an independent intervening cause.

TENTH AFFIRMATIVE DEFENSE

The LVMPD Defendants cannot be held liable for an intracorporate conspiracy.

ELEVENTH AFFIRMATIVE DEFENSE

The LVMPD Defendants had probable cause to arrest.

TWELFTH AFFIRMATIVE DEFENSE

The LVMPD Defendants did not fabricate any evidence.

THIRTEENTH AFFIRMATIVE DEFENSE

The LVMPD Defendants did not withhold any evidence.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's unlawful interrogation/coercion claim (COUNT I) has already been dismissed by this Court and is, therefore, untenable as a matter of law.

WHEREFORE the LVMPD Defendants pray for judgment as follows:

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1 1. That Plaintiff takes nothing by virtue of her First Amended Complaint on file
2 herein, that the same be dismissed with prejudice;

3 2. For an award of reasonable attorney fees and costs of suit incurred in the
4 defense of this action; and

5 3. For such other and further relief as the Court may deem just and proper.

6 Dated this 11th day of July, 2023.

7 MARQUIS AURBACH

8 By: s/Craig R. Anderson
9 Craig R. Anderson, Esq.
10 Nevada Bar No. 6882
10001 Park Run Drive
11 Las Vegas, Nevada 89145
Attorneys for LVMPD Defendants

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that I electronically filed the foregoing **LVMPD DEFENDANTS'**
14 **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** with the Clerk of the
15 Court for the United States District Court by using the court's CM/ECF system on the 11th
16 day of July, 2023.

17 ☒ I further certify that all participants in the case are registered CM/ECF users
18 and that service will be accomplished by the CM/ECF system.

19 ☒ I further certify that some of the participants in the case are not registered
20 CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid,
21 or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days
22 to the following non-CM/ECF participants: n/a
23

24 s/Sherri Mong
25 An employee of Marquis Aurbach
26
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